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Attorney for defendant David Reid

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

CR-05-1849 JH

vs.

DAVID REID,

Defendant.

Response to Plaintiff's Notice of Pending Issues

It is the understanding of counsel for the Defendant Reid that the only issues to be addressed at the upcoming hearing will be the discovery issues specifically related to the upcoming *Franks* hearing. Parenthetically, a *Franks* hearing is not limited to factual development of the specific issues that the Court has already found to contain material misstatements or omissions. Once a Court makes a finding that a *Franks* Hearing is mandated, all facts that are related to the search or wiretap are subject to

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1 full development. For example, in United States v. Gonzalez, 412 F.3d
2 1102(9th Cir. 2005), the hearing involved the full development of all
3 information available to the Government and cross examination of the case
4 agent regarding all of the steps that were claimed to have not been taken
5 due to ineffectiveness or danger. These were in addition to the specifically
6 articulated grounds found supporting the request for *Franks* Hearing.¹
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9 In this regard, the Government has agreed to have the affiant
10 available at the hearing without the necessity of the issuance of a
11 subpoena for purposes of cross examination by defense counsel.²
12

13 The sequencing that counsel for the plaintiff and the defense had
14 previously agreed to and related to the Court is that the *Franks* hearing
15 would take place and evidence would be developed there. A hearing for
16 argument on the Motion to Suppress (Wiretap) evidence would be set
17 thereafter in order to give counsel time to evaluate, and brief if necessary,
18 the evidence developed at that hearing. If the Motion to Suppress
19 (Wiretap) is granted, there would be no need for further steps. If the
20 Motion to Suppress is denied, a hearing would be scheduled on any
21
22

23
24 ¹ The reality herein is that the affidavit concedes that not all facts were
25 presented. Thus, all facts are relevant to the *Franks* inquiry.

26 ² The parties have agreed that testimony of Dana Jarvis regarding wiretap issues
will be presented by deposition at the hearing.

1 remaining discovery and other issues that were trial-related. A trial date
2 would also be set to follow that hearing.
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8 Electronically filed,
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10

11 /s/ Walter Nash

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2010, I filed the foregoing electronically through the CM/ECF system, which caused all counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing.

Electronically filed

Walter Nash

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